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The Law and Elderly People

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Alison Brammer. 1994. The Registered Homes Act 1984: safeguarding the elderly? *Journal of Social Welfare and Family Law*, 4, 423-437.

In this article the author, who is a solicitor and lecturer in law at the University of Keele, writes about what she identifies as deficiencies in the system of quality control and policing introduced by that Act. The background against which this legislation was introduced is outlined and the need for registration indicated. The actual process of registration is set out and the main thrust of the article consists of a variety of criticisms, both of the legislation itself and of the interpretation and application of that law by the Registered Home Tribunal. Any person who is seeking registration must be a 'fit person' but this element of fitness is nowhere defined in the Act nor is it even the subject of guidance. Two streams of case-law have emerged in Tribunal interpretative decisions. An element of confusion appears to exist as to how far authorities have power to add conditions on registration.

Alison Brammer discusses those cases where serious risk to the health, life or well-being of residents is in question in relation to orders cancelling registration; she also discusses the way in which the Tribunal appears to have adopted some sort of 'sliding scale' standard of proof. The unsatisfactory way in which the Tribunal has looked at financial considerations has also been highlighted in this article. The article concludes by pointing out that while from April 1991 all local government authorities were obliged to establish arms-length inspection units, amending legislation is now in force which brings small homes, *i.e.* those with fewer than four residents, within the ambit of the registration scheme, but no additional resources are provided speci-

fically for these extensions of the role of inspection. It is suggested that the inspection role should be extended and extra resources provided with co-ordinated training for inspectors operating under national guidelines to ensure an efficient service.

COMMENT

Alison Brammer illuminates an area of law with which many of those working for or with older people will probably not be familiar. The article affords a useful insight into the workings of the Registered Homes Tribunal and offers a number of constructive suggestions and proposals for improvement of the law which many would welcome.

Joan Langan and Robin Means. 1994. Money management and elderly people with dementia. *Elders: The Journal of Care and Practice*, September, 33–42.

This article contains a helpful summary of the legal framework in England and Wales relating to personal finance and elderly people with dementia. This is followed by a discussion of limitations in existing law which initially highlights the unsatisfactory state of affairs relating to the absence of an obligation upon an agent collecting benefits on behalf of another to inform The Benefits Agency if the claimant becomes no longer capable of giving the agent authority to draw their benefit.

The authors suggest that ‘in the light of ignorance or unwillingness to institute appointeeship, there must be temptation for paid and unpaid carers to retain access to funds without their being authorised to do that’. The criticism is also made that The Benefits Agency is not required to seek medical evidence on appointeeship, so that one can be set up without there being an independent assessment of the person’s mental capacity. It is suggested that reliance upon the integrity of attorneys under Enduring Powers to inform the Court of Protection of deterioration in the donor’s mental capacity is also a weakness in the system. Another issue raised in the article is the appropriateness of home owners acting as appointees; the Law Commission’s proposals in this area are noted, including its suggestion that appointeeship should be reviewed periodically and that the appointee should be required to provide, if asked, an account of how the claimant’s benefit has been spent. Criticism is also made of the ‘all or nothing’ approach of the current law as to mental capacity which fails to support client autonomy for those who are still capable of managing some of their

financial affairs, or perhaps having periods of lucidity between periods of confusion.

The second part of the article discusses several policy and practice issues raised by the increasing involvement of local authorities with financial management and elderly people with dementia and a discussion of a research project carried out by the authors in Kirklees among various professionals working with such people. This pilot study revealed concerns about money being 'siphoned off' by relatives, about relatives keeping back some of the personal allowance, and of the difficulty in persuading relatives to pay for items like hair-dressing or outings.

COMMENT

This important article concludes with a telling quotation from an *Age Concern Briefing Paper*: 'in many instances, power over the purse is the equivalent of power over the person'. I welcome the expression of the view that there is a need for specialist independent advice for elderly people, their carers and relatives and I was pleased to note echoes of my constant refrain, namely that solicitors do not always precisely identify whether they are acting for the older person or their relatives in a situation of an actual or a potential conflict of interests.

John Williams. 1995. Elder abuse and access to law. *BASELINE: Journal of the British Association for Service to the Elderly*, June, 20–26.

In this article John Williams, Senior Lecturer in Law in the University of Wales at Aberystwyth, discusses why the law is so little used in tackling the problems of elder abuse. While recognising that inappropriate legal intervention may in fact make the situation worse, the author suggests that a policy of never contemplating legal intervention 'may effectively deny older people an option that is readily available to others'. The author thoroughly examines the question of victim-reluctance and draws lessons from experience with the giving of evidence by children; he points out that the *Royal Commission on Criminal Justice* has recommended an extension of such procedures to cover vulnerable adults. The article further suggests that thought must be given to the protection of the victims of abuse by extension of some of the orders available in domestic violence legislation. Professional and agency attitudes, including that of the police, are also discussed in this article, which concludes by stressing that more vulnerable people may require assistance in making use of

the law and do not have sufficient recognition of their right to participate fully in the legal process.

COMMENT

This is an important contribution to the growing debate about the practicalities of dealing with elder abuse. As a lawyer and a council member of *Action on Elder Abuse*, I find it difficult to explain that the law of England and Wales does not recognise any specific concept of Elder Abuse, but that the law nonetheless does provide redress and remedies which it may be appropriate upon occasion to invoke. I commend this article to all those entering the debate.

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Research and Policy in Canada

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Frank T. Denton and Byron G. Spencer. 1995. Demographic change and the cost of publicly-funded health care. *Canadian Journal on Aging*, 14, 174–192.

This article examines in a Canadian setting the implications of demographic change (population growth and ageing) for operating a publicly-funded health care system and investigates how prospective population changes will affect the share of total national income expended on health care over the next several decades. The authors' population projections predict that the percentage of Canadians aged 65 years and over will increase from 10.6 per cent in 1986 to 23.2 per cent in 2041. National projections for the period 1986–2041, with per capita expenses for each age-sex group held constant, indicate that percentage increases in health care and social security expenditures must exceed the percentage growth of overall population to maintain 'constant quality'. On the other hand, the required growth of educational expenditures is projected to be considerably lower than the prospective growth of the total population. However, when the effects of population ageing are isolated from the effects of overall population growth, the former are responsible for the largest share of the projected increases in government health care expenditures.

A case study analyses changes in service provision during the 1980s by Ontario hospitals that were subject to budgetary restrictions. In addition, provincial health care requirements and resource availability are projected for 1990–2010. Between 1980 and 1990, the Government